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**IN THE
COURT OF APPEALS OF INDIANA**

GEOFFREY MASSEY,

Appellant-Respondent,

vs.

KRISTINA M. (MASSEY) HIGGINS,

Appellee-Petitioner.

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No. 48A02-0611-CV-994

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0407-MI-702

March 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Geoffrey Massey (“Father”) appeals from the trial court’s order modifying the parenting time he has with his minor daughter, H.M. Father raises two issues for our review, which we consolidate and restate as whether the trial court abused its discretion in reducing Father’s parenting time due to the distance between Father’s residence and the residence of Kristina Higgins (“Mother”), with whom H.M. lives.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 8, 2003, the parties’ marriage was dissolved in Illinois. Mother, who was awarded physical custody of the parties’ only child, H.M., born on December 21, 1997, subsequently moved to Anderson, Indiana, and the judgment of the Illinois court was domesticated in Madison County, Indiana, on July 23, 2004. Although H.M. currently lives with Mother in Anderson, Father lives approximately 250 miles away in Lake Zurich, Illinois, a suburb of Chicago.

On September 7, 2004, the trial court entered an order awarding Father parenting time pursuant to the Indiana Parenting Time Guidelines. On June 23, 2006, Father filed a Petition for Clarification on Parenting Time, “requesting that the Court clarify the Order for Parenting [T]ime . . . taking distance into consideration.” Appellant’s App. at 117. On July 11, 2006, Father filed an Emergency Petition to Enforce Summer Parenting Time, asserting that “his parenting time should be as provided for in the Indiana

Parenting Time Guidelines, as applied where distance is a factor.” Id. at 118. In response, on August 8 Mother filed a Petition to Modify, requesting the court to “implement the Indiana Parenting Time Guidelines where Distance is a factor.” Id. at 122.

On August 8, the court held an evidentiary hearing on all pending motions. At that hearing, Father and his attorney engaged in the following discussion:

Q And you’re not requesting that any parenting time be taken [] away from you [but] that you have it increased in fact, is that correct?

A Yes.

Q Do you have any problem exercising your regular alternating weekend visitation?

A No.

Q But you’re unable—are you unable to exercise mid-week visitation?

A Yes.

Q Can you exercise visitation during the week?

A No.

Q And you’re requesting in lieu of that that you be given additional time over the summer and during [s]pring break?

A Yes.

Id. at 29-30. On the other hand, Mother testified that she did not think Father should get additional time with H.M., stating during her direct examination:

Q You’re okay with parenting time as a distance, he wants both. And

you're asking the court—

THE COURT: Both, what do you mean both?

PETITIONER'S [Mother's] COUNSEL—MR. SMITH: He wants both the local visitation, as well as parenting time.

Q That's really the dispute, is that right?

A That's my understanding, yes.

* * *

THE COURT: [T]he question was he wants parenting time where distance is a major factor and also regular parenting time, is that what you're saying?

PETITIONER'S COUNSEL[]: That's exactly what I'm saying.

THE COURT: Okay. All right. Go ahead.

Q And you're okay with the parenting time [where distance is a major factor] which . . . would require—give him seven weeks in the summer, that would give him every spring break and it would also give him . . . a week at winter break

A That's correct.

* * *

Q [H]ave you given him more visitation than required?

A Yes, I have.

Q And are you trying to keep [H.M.] away from him?

A Absolutely no.

Q Are you going to try to keep [H.M.] away from him?

A No, I will not.

Q You want [H.M.] to have a relationship with her father?

A Yes, I do.

Q But you don't believe he should have both, every other weekend and this time?

A Yes.

Q I think I calculated it and it would be substantially more than the normal person would have as far as the visitation for overnights. And it is somewhat of a difficult thing with the distance, is that right?

A Yes, it is.

* * *

Q And so we've asked the Court to go ahead and just give him the parenting time guidelines as distance, so there's no further and to essentially stop the other visitation.

A Yes.

Q And you could certainly make arrangements if he asked for other time, you would cooperate and work with him as far as that.

A Yes.

Id. at 40-44.

On August 10, the court entered an order ("Order") modifying Father's parenting time as per Mother's request. The Order states, in relevant part:

Distance is a major factor because Father lives in Chicago and custodial Mother lives in Madison County, Indiana. Therefore, Section III of the Parenting Time Guidelines shall be operative in determining Father's

parenting time. The Commentary to Section III indicates that “When distance is a major factor, the following parenting time schedule may be helpful:” [sic] The Court places emphasis on “may be helpful.” This introduction to the commentary would indicate that (C) [which suggests a parenting time schedule for children five years of age and older], under this Commentary[,] is not mandatory[] but helpful as a suggestion.

Therefore, the Court finds that Father shall have that visitation outlined in (C) and in addition shall have visitation on the weekend before or after or during his child’s birthday, if said birthday does not already fall within a period in which he is ordered to have visitation. . . .

Id. at 7. This appeal ensued.

DISCUSSION AND DECISION

When we review a trial court’s determination of a parenting time issue, we reverse only when the trial court manifestly abuses its discretion. J.M. v. N.M., 844 N.E.2d 590, 599 (Ind. Ct. App. 2006) (citing Lasater v. Lasater, 809 N.E.2d 380, 396 (Ind. Ct. App. 2004)), trans. denied. No abuse of discretion occurs if there is a rational basis in the record supporting the trial court’s determination. Id. We will neither reweigh evidence nor judge the credibility of witnesses. Id. In all parenting time controversies, courts are required to give foremost consideration to the best interests of the child. Id.

Father first contends that the trial court erroneously determined that Sections II and III of Indiana’s Parenting Time Guidelines are mutually exclusive when it adopted Comment C to Guideline III as Father’s parenting time schedule. Section II of Indiana’s Parenting Guidelines describes the alternating-weekend schedule Father had been exercising, while Section III of Indiana’s Parenting Time Guidelines discusses “parenting

time when distance is a major factor.” Ind. Parenting Time Guideline §§ II, III. The Commentary to Section III states:

When distance is a major factor, the following parenting time schedule may be helpful: . . . (C)[:] For a child 5 years of age and older, seven (7) weeks of the school summer vacation period and seven (7) days of the school winter vacation plus the entire spring break, including both weekends if applicable.

Id. § III commentary. As the trial court correctly noted, the permissive language of the commentary dictates that Comment C “is not mandatory[] but helpful as a suggestion.” Appellant’s App. at 7.

Father’s argument on appeal that the trial court’s adoption of Comment C’s suggested approach necessarily excluded alternatives is without merit. The trial court did not address the application of Section II of the Parenting Time Guidelines, and Father’s support in the record for his argument to the contrary is simply Mother’s request that the court apply only Section III. Mother made no argument that Section II was barred as a matter of law if Section III applied. Although Father did request that the trial court apply both Section II and Section III, the court’s decision not to do so was based on the parties’ stipulation that distance was a major factor and Mother’s request to apply only Section III, which specifically addresses “parenting time when distance is a major factor.” See Parent. Time G. § III. It was within the trial court’s discretion to apply only Section III of the Parenting Time Guidelines. See J.M., 844 N.E.2d at 599.

Father next contends that the court abused its discretion in reducing his parenting time. Again, no abuse of discretion occurs if there is a rational basis in the record supporting the trial court's determination. Id. Here, both parties stipulated to the court that distance was a major factor, as Father lived approximately 250 miles from the custodial parent, or between four and five hours of one-way driving time. Thus, the court had a rational basis for modifying Father's parenting time to conform with Section III of the Parenting Time Guidelines. Father's arguments on this issue amount to a request that we reweigh the evidence or judge the credibility of witnesses, which we will not do. See id.

Father also maintains that the trial court erred by not considering the best interests of H.M. in modifying Father's parenting time. Again, we cannot agree. The court held a hearing on the issue of parenting time modification, and at that hearing both parents testified that distance had become a major factor. And Mother explicitly stated that arranging parenting time was "a difficult thing with the distance." Appellant's App. at 43. It was rational for the trial court to infer from those statements that modification was in H.M.'s best interests—the amount of parenting time that could be lost during travel is potentially significant, but allowing H.M. to have extended stays with Father during the summer and winter would alleviate that concern. See Huffman v. Huffman, 623 N.E.2d 445, 449 (Ind. Ct. App. 1994). As such, we cannot say that the trial court abused its discretion in modifying Father's parenting time schedule.

Affirmed.

RILEY, J., and BARNES, J., concur.